

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant
9

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2009-129

14 KAREN DIANE ALISON MESSICK,
a.k.a. KAREN DIANA MESSICK
15 P.O. Box 693
Perris, CA 92572

A C C U S A T I O N

16 Registered Nurse License No. 469741

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
23 ("Board"), Department of Consumer Affairs.

24 2. On or about August 31, 1991, the Board issued Registered Nurse License
25 Number 469741 to Karen Diane Alison Messick, also known as Karen Diana Messick
26 ("Respondent"). Respondent's registered nurse license was in full force and effect at all times
27 relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

(a) Unprofessional conduct . . .

6. Code section 2762 states, in pertinent part:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of
4 a record pertaining to, the substances described in subdivision (a) of this section,
5 in which event the record of the conviction is conclusive evidence thereof.

6 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
7 unintelligible entries in any hospital, patient, or other record pertaining to the
8 substances described in subdivision (a) of this section.

9 7. Code section 2765 states:

10 A plea or verdict of guilty or a conviction following a plea of nolo
11 contendere made to a charge substantially related to the qualifications, functions
12 and duties of a registered nurse is deemed to be a conviction within the meaning
13 of this article. The board may order the license or certificate suspended or revoked,
14 or may decline to issue a license or certificate, when the time for appeal has elapsed,
15 or the judgment of conviction has been affirmed on appeal or when an order
16 granting probation is made suspending the imposition of sentence, irrespective of
17 a subsequent order under the provisions of Section 1203.4 of the Penal Code
18 allowing such person to withdraw his or her plea of guilty and to enter a plea of
19 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
20 information or indictment.

21 8. Code section 2770.11 states:

22 (a) Each registered nurse who requests participation in a diversion
23 program shall agree to cooperate with the rehabilitation program designed by a
24 committee. Any failure to comply with the provisions of a rehabilitation program
25 may result in termination of the registered nurse's participation in a program. The
26 name and license number of a registered nurse who is terminated for any reason,
27 other than successful completion, shall be reported to the board's enforcement
28 program.

(b) If a committee determines that a registered nurse, who is denied
admission into the program or terminated from the program, presents a threat to
the public or his or her own health and safety, the committee shall report the name
and license number, along with a copy of all diversion records for that registered
nurse, to the board's enforcement program. The board may use any of the records
it receives under this subdivision in any disciplinary proceeding.

9. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
(iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
This section shall not apply to the possession of any controlled substance by a

1 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
2 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
3 practitioner, or physician assistant, when in stock in containers correctly
4 labeled with the name and address of the supplier or producer . . .

5 10. Health and Safety Code section 11170 states that no person shall prescribe,
6 administer, or furnish a controlled substance for himself.

7 11. Health and Safety Code section 11173, subdivision (a), states, in pertinent
8 part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or
9 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
10 deceit, misrepresentation, or subterfuge . . ."

11 COST RECOVERY

12 12. Code section 125.3 provides, in pertinent part, that the Board may request
13 the administrative law judge to direct a licensee found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case.

16 CONTROLLED SUBSTANCES AT ISSUE

17 13. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled
18 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

19 14. "Oxazepam" is a Schedule IV controlled substance as designated by
20 Health and Safety Code section 11057, subdivision (d)(23).

21 15. "Restoril", a brand of temazepam, is a Schedule IV controlled substance as
22 designated by Health and Safety Code section 11057, subdivision (d)(29).

23 16. "Vicodin", a combination drug containing 5 mg hydrocodone bitartrate,
24 also known as dihydrocodeinone, and 500 mg acetaminophen per tablet, is a Schedule III
25 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

26 17. "Morphine/morphine sulfate" is a Schedule II controlled substance as
27 designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

28 18. "Percocet, a brand of oxycodone, is a Schedule II controlled substance as
designated by Health and Safety Code section 11055, subdivision (b)(1)(N).

**RESPONDENT'S TERMINATION FROM BOARD'S
DIVERSION PROGRAM AS A PUBLIC SAFETY RISK**

19. On March 8, 2007, Respondent was enrolled in the Board's diversion program. On March 26, 2007, and April 11, 2007, Respondent tested positive for oxazepam, and was mandated to enter a residential chemical dependency treatment program. Respondent refused to enter residential treatment and was terminated from the diversion program on April 23, 2007. On or about May 22, 2007, Respondent was re-admitted to the diversion program. On July 5, 2007, the Diversion Evaluation Committee terminated Respondent from the diversion program as a public safety risk due to Respondent's history of drug use, diversion from the workplace, positive drug screens, numerous unsuccessful chemical dependency treatment programs, non-compliance with the diversion program, and refusal to enter residential treatment.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

20. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (f), in that on or about September 26, 2002, in the criminal proceeding titled *People v. Karen Diana Messick* (Super. Ct. Riverside County, 2002, Case No. SWM004936), Respondent pled guilty to violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while having .08 percent and more, by weight, of alcohol in his/her blood, a misdemeanor), a crime substantially related to the qualifications, functions, and duties of a registered nurse. The incident on which Respondent's conviction is based occurred on or about May 24, 2002.

///

///

///

///

///

///

///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Diversion, Possession, and Self-Administration of Controlled Substances)**

3 21. Respondent is subject to disciplinary action pursuant to Code section
4 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
5 2762, subdivision (a), in that while licensed as a registered nurse, Respondent did the following:

6 **Diversion of Controlled Substances:**

7 a. On or about February 21, 2007, while on duty as a registered nurse in the
8 Progressive Care Unit at Riverside County Regional Medical Center, Moreno Valley, California,
9 Respondent obtained the controlled substance Dilaudid by fraud, deceit, misrepresentation, or
10 subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), as follows: On
11 the date indicated above, patient 1 requested medication for her abdominal pain (the patient had
12 an order for Dilaudid 1 mg every 3 hours). At approximately 2304 hours, Respondent removed a
13 vial of 2 mg Dilaudid from the Pyxis under the patient's name. In fact, Respondent was not
14 assigned to the patient, had not been requested by the patient's assigned nurse to administer the
15 medication, and kept the Dilaudid for her personal use. Further, when Respondent learned that
16 the patient denied receiving the medication, Respondent misrepresented to medical center staff
17 that she administered the Dilaudid to the patient, and falsified the Medication Administration
18 Record ("MAR") to conceal her diversion of the Dilaudid, as set forth in subparagraph 24 (a)
19 below.

20 **Possession of Controlled Substances:**

21 b. On or about February 21, 2007, Respondent possessed a vial of 2 mg
22 Dilaudid, as set forth in subparagraph (a) above, without a valid prescription from a physician,
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section
24 4060.

25 **Self-Administration of Controlled Substances:**

26 c. On or about March 26, 2007, and April 11, 2007, while enrolled in the
27 Board's diversion program, Respondent self-administered unknown quantities of the controlled
28 substance oxazepam without lawful authority therefor.

1 d. On or before July 22, 2008, Respondent self-administered unknown
2 quantities of the controlled substances Restoril and Vicodin without lawful authority therefor, as
3 follows: On the date indicated above, an investigator with the Division of Investigation,
4 Department of Consumer Affairs, requested that Respondent voluntarily provide a urine sample
5 for drug testing. Respondent refused, then admitted to the investigator that she had taken
6 Restoril and Vicodin a few days earlier when she did not have a prescription for either
7 medication.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Use of Alcoholic Beverages to an Extent or in a Manner
10 Dangerous or Injurious to Oneself or Others)**

11 22. Respondent is subject to disciplinary action pursuant to Code section
12 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
13 2762, subdivision (b), in that on or about May 24, 2002, Respondent consumed alcoholic
14 beverages to an extent or in a manner dangerous or injurious to herself and/or others, as set forth
15 in paragraph 20 above.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Conviction Related to the Consumption of Alcoholic Beverages)**

18 23. Respondent is subject to disciplinary action pursuant to Code section
19 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
20 2762, subdivision (c), in that on or about September 26, 2002, Respondent was convicted of a
21 criminal offense involving the consumption of alcoholic beverages, as set forth in paragraph 20
22 above.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(False Entries in Hospital/Patient Records)**

25 24. Respondent is subject to disciplinary action pursuant to Code section
26 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
27 2762, subdivision (e), in that in or about January 2007, and February 2007, while on duty as a
28 registered nurse in the Progressive Care Unit at Riverside County Regional Medical Center,

1 Moreno Valley, California, Respondent falsified, or made grossly incorrect, grossly inconsistent,
2 or unintelligible entries in hospital, patient, or other records pertaining to the controlled
3 substances Dilaudid, Restoril, morphine, Vicodin, and Percocet, as follows:

4 **Patient 1:**

5 a. On February 21, 2007, at approximately 2304 hours, Respondent withdrew
6 2 mg Dilaudid from the Pyxis under patient 1's name when, in fact, Respondent was not assigned
7 to the patient, and had not been requested by the patient's assigned nurse to administer the
8 medication. Further, Respondent charted in the patient's MAR that she administered the
9 Dilaudid to the patient when, in fact, Respondent kept the Dilaudid for her personal use.

10 **Patient 3:**

11 b. On January 23, 2007, at 0324 hours, Respondent withdrew Restoril 15 mg
12 from the Pyxis under patient 3's name, but failed to chart the administration of the Restoril on the
13 patient's MAR and otherwise account for the disposition of the Restoril 15 mg.

14 **Patient 4:**

15 c. On January 23, 2007, at 0049 hours, Respondent withdrew Dilaudid 2 mg
16 from the Pyxis under patient 4's name, but failed to chart the administration of the Dilaudid on
17 the patient's MAR and otherwise account for the disposition of the Dilaudid 2 mg.

18 **Patient 6:**

19 d. On January 23, 2007, at approximately 0202 hours, Respondent withdrew
20 Dilaudid 2 mg from the Pyxis under patient 6's name, documented in the Pyxis that she
21 administered 1.5 mg Dilaudid to the patient and wasted the remaining .5 mg, but failed to chart
22 the administration or wastage of the Dilaudid on the patient's MAR or otherwise account for the
23 disposition of the Dilaudid 2 mg.

24 **Patient 7:**

25 e. On February 20, 2007, at 0324 hours, Respondent withdrew Morphine
26 2 mg from the Pyxis under patient 7's name, documented in the Pyxis that she administered 1 mg
27 morphine to the patient and wasted the remaining 1 mg, but failed to chart the administration or

28 ///

1 wastage of the morphine on the patient's MAR and/or otherwise account for the disposition of
2 the morphine 2 mg.

3 **Patient 8:**

4 f. On February 8, 2007, at 2319 hours, Respondent withdrew Dilaudid 2 mg
5 from the Pyxis under patient 8's name. Respondent charted on the patient's MAR that she
6 administered 1 mg Dilaudid to the patient at 0020 hours, and failed to chart the wastage of the
7 remaining 1 mg Dilaudid on the patient's MAR or otherwise account for the disposition of the
8 Dilaudid 1 mg.

9 g. On February 9, 2007, at 0221 hours, Respondent withdrew Dilaudid 2 mg
10 from the Pyxis under patient 8's name, charted on the patient's MAR that she administered 1 mg
11 Dilaudid to the patient at 0400 hours, but failed to chart the wastage of the remaining 1 mg
12 Dilaudid on the patient's MAR or otherwise account for the disposition of the Dilaudid 1 mg.

13 h. On February 9, 2007, at 0510 hours, Respondent withdrew Dilaudid 2 mg
14 from the Pyxis under patient 8's name, documented in the Pyxis that she administered 1 mg
15 Dilaudid to the patient and wasted the remaining 1 mg, but failed to chart the administration or
16 wastage of the Dilaudid on the patient's MAR or otherwise account for the disposition of the
17 Dilaudid 2 mg.

18 **Patient 10:**

19 i. On January 28, 2007, at 1928 hours, Respondent withdrew morphine 2 mg
20 from the Pyxis under patient 10's name, but failed to chart the administration or wastage of the
21 morphine on the patient's MAR and otherwise account for the disposition of the morphine 2 mg.

22 j. On January 28, 2007, at approximately 2330 hours, Respondent withdrew
23 two Vicodin tablets from the Pyxis under patient 10's name, but failed to chart the administration
24 or wastage of the Vicodin on the patient's MAR and otherwise account for the disposition of the
25 two tablets of Vicodin.

26 **Patient 11:**

27 k. On January 28, 2007, at approximately 2130 hours, Respondent withdrew
28 Dilaudid 2 mg from the Pyxis under patient 11's name, documented in the Pyxis that she

1 administered .5 mg Dilaudid to the patient and wasted the remaining 1.5 mg, but failed to chart
2 the administration or wastage of the Dilaudid on the patient's MAR or otherwise account for the
3 disposition of the Dilaudid 2 mg.

4 l. On January 29, 2007, at approximately 2013 hours, Respondent withdrew
5 Dilaudid 2 mg from the Pyxis under patient 11's name, documented in the Pyxis that she
6 administered .5 mg Dilaudid to the patient and wasted the remaining 1.5 mg, but failed to chart
7 the administration or wastage of the Dilaudid on the patient's MAR or otherwise account for the
8 disposition of the Dilaudid 2 mg.

9 **Patient 12:**

10 m. On January 29, 2007, at 0016 hours, Respondent withdrew one Vicodin
11 tablet from the Pyxis under patient 12's name, but failed to chart the administration or wastage of
12 the Vicodin on the patient's MAR and otherwise account for the disposition of the one Vicodin
13 tablet.

14 **Patient 13:**

15 n. On February 1, 2007, at approximately 0323 hours, Respondent withdrew
16 Dilaudid 2 mg from the Pyxis under patient 13's name, documented in the Pyxis that she
17 administered 1 mg Dilaudid to the patient and wasted the remaining 1 mg, but failed to chart the
18 administration or wastage of the Dilaudid on the patient's MAR or otherwise account for the
19 disposition of the Dilaudid 2 mg.

20 o. On February 1, 2007, at approximately 0652 hours, Respondent withdrew
21 Dilaudid 2 mg from the Pyxis under patient 13's name, documented in the Pyxis that she
22 administered 1 mg Dilaudid to the patient and wasted the remaining 1 mg, but failed to chart the
23 administration or wastage of the Dilaudid on the patient's MAR or otherwise account for the
24 disposition of the Dilaudid 2 mg.

25 **Patient 14:**

26 p. On February 8, 2007, at 2359 hours, Respondent withdrew one Percocet
27 tablet from the Pyxis under patient 14's name, but failed to chart the administration or wastage of

28 ///

1 the Percocet on the patient's MAR and otherwise account for the disposition of the one Percocet
2 tablet.

3 **Patient 15:**


4 q. On February 8, 2007, at 2039 hours, Respondent withdrew morphine 2 mg
5 from the Pyxis under patient 15's name, but failed to chart the administration or wastage of the
6 morphine on the patient's MAR and otherwise account for the disposition of the morphine 2 mg.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 469741, issued
11 to Karen Diane Alison Messick, also known as Karen Diana Messick;
- 12 2. Ordering Karen Diane Alison Messick, also known as Karen Diana
13 Messick, to pay the Board of Registered Nursing the reasonable costs of the investigation and
14 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 11/26/08.

18
19 
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

20
21
22 Complainant

23

24

25

26

27

28